

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures

Chapter 5. Confidential Information Regulations

§501. Scope

A. Department of Environmental Quality ~~records and information and records~~ obtained under the Louisiana Environmental Quality Act, ~~(hereinafter called "the Act")~~, or by any rule, regulation, order, license, registration, or permit term or condition adopted or issued thereunder, or by any investigation authorized thereby, shall be available to the public, unless confidentiality is requested ~~by~~ in writing to the Office of the Secretary, Legal Affairs Division, and such the information or records is are determined by the ~~administrative authority department~~ to require confidentiality. ~~Such information may be classified as confidential by the administrative authority,~~

B. ~~u~~Unless otherwise provided by law or regulation, information or records may be classified as confidential if the secretary makes a written determination that confidentiality is necessary to:

1. prevent impairment of an ongoing investigation ~~or~~;
2. prevent prejudice to the final decision regarding a violation; ~~or~~
23. protect trade secrets;~~;~~
4. protect proprietary secrets ~~and information, and~~;
5. protect commercial or financial information; ~~or~~
6. comply with federal or state law or regulation or a valid court order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), LR 30:**.

§502. Definitions

Administrative Authority—~~repealed. the secretary of the Department of Environmental Quality or his designee, or the appropriate assistant secretary or his designee.~~

Air Emission Data—any information necessary or used to determine or calculate the identity, amount, frequency, concentration, or other characteristic of any emission or discharge that has been emitted or discharged by a source; or any information necessary

or used to determine or calculate the identity, amount, frequency, concentration, or other characteristic of an emission that, under an applicable standard or limitation, a source was authorized to emit or discharge including, to the extent necessary to identify the source and to distinguish it from other sources, a description of the device, installation, or operation constituting the source. This includes the calculation of an “allowable” emission limit for a permit.

Complete—in reference to a request for confidentiality of information or records, the request contains everything necessary for a determination to be made. Designating a request complete does not preclude the department from requesting or accepting an amended request.

Financial Request—a single character request that contains financial information or records only. This includes, but is not limited to, financial accounts statements, gross revenues statements, profit and loss statements, projected revenues statements, tax returns, financial/accounting statements, and financial audit documentation/reports.

Mixed Character Record—a record submitted as part of a request for confidentiality that, in addition to information that meets the criteria for confidentiality specified by law, also contains information that either does not meet the criteria for confidentiality specified by law or is prohibited by law or regulation from being classified as confidential.

Mixed Character Request—a request for confidentiality that contains one or more mixed character records.

Single Character Request—a request for confidentiality that contains only information or records that meet the criteria for confidentiality specified by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), amended LR 30:**.

§503. Requests for Confidentiality

~~A. — Anyone outside the department requesting confidentiality shall provide to the administrative authority a written statement indicating the reasons for asserting confidentiality. This claim of confidentiality shall state:~~

- ~~1. — the measures taken to guard against undesired disclosure of the information to others;~~
- ~~2. — the extent to which the information has been disclosed to others and the precautions taken in connection therewith;~~
- ~~3. — whether disclosure of the information would be likely to result in substantial harmful effects in the competitive market, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects; and~~
- ~~4. — the period of time for which confidential treatment is desired.~~

~~B. — Anyone outside the department submitting information to the administrative authority for which a confidentiality claim is asserted shall follow the procedures outlined below:~~

~~1. — a cover sheet shall be attached to the information, which has been conspicuously labeled with the word "CONFIDENTIAL." Each page or any item (e.g., pictures, maps, video tapes, computer disks, etc.) that contains alleged confidential information shall also be clearly labeled;~~

~~2. — to the maximum extent possible, confidential information shall be segregated to facilitate identification and handling. The confidential information shall be specifically referenced as appropriate in the nonconfidential document. Blacking out confidential portions of otherwise public documents is permissible, provided the blacked out portions are clearly identified in both confidential and nonconfidential versions; and~~

~~3. — in cases where confidential information cannot be reasonably extracted or separated from nonconfidential information, and when the information does not include information described in LAC 33:I.505.B, the whole document shall be confidential.~~

A. Each request for confidentiality shall include all of the following:

1. a statement whether the request for confidentiality is a single character request, a mixed character request, or a financial request;

2. a list or an index identifying each separate record, category of records, or item of information and stating the legal authority under which each separate record or item of information may be determined to require confidentiality;

3. a statement of the measures taken to guard against undesired disclosure to others of each record or item of information;

4. a statement of the extent to which the information or records have been disclosed to others and the precautions taken in connection therewith;

5. a statement whether disclosure of the information or records would be likely to result in substantial harmful effects in the competitive market and, if so:

a. a statement of what those effects would be;

b. a statement of why they should be viewed as substantial;

and

c. an explanation of the causal relationship between disclosure and such harmful effects for each record or item of information;

6. a statement whether any previous request for confidentiality has been made to any government agency for the same information or records and, if so, the date of the request and its disposition; and

7. a certification that all statements are true and correct to the best of the requester's knowledge.

B. Each request shall be submitted with two versions of the information or records; one version to be clearly marked "confidential," and the other to be clearly marked "public."

1. The confidential version is to show all information and must clearly indicate what confidential information is excised from the public version.

2. The public version is to have the confidential information excised and must clearly show that confidential information has been excised.

3. Blacking out confidential portions of otherwise public records is permissible, provided that the blacked-out portions are clearly identified in both confidential and public versions.

C. A financial request is not required to comply with the provisions of Paragraphs A.2-5 of this Section.

D. A single character request shall include a certification that no record or item of information is contained in the request that:

1. fails to meet the criteria for confidentiality specified by law; or
2. is prohibited by law or regulation from being classified as confidential.

E. Specific categories of information that are prohibited from being classified as confidential include:

1. air emission data;
2. any permit or portion of a permit issued to a source in accordance with LAC 33:III.507;
3. effluent and discharge data to surface water and groundwater;
4. the location and identification of any buried waste;
5. the name and address of any license, registration, or permit applicant or permittee;
6. all NPDES, LPDES, and other water discharge permit applications or permits and information required by LPDES application forms, including information submitted on the forms and any attachments used to supply information required by the forms;
7. any other information required by law or regulation to be disclosed or made available to the public; and
8. any other information for which a claim of confidentiality is prohibited by law or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:**.

§505. ~~Agency Review of Confidential Information~~ Responses to Requests for Confidentiality

A. ~~Within 21 working days from the date of receipt of a request for confidentiality, the secretary shall issue a written notice of determination. Anyone outside the department will be notified by certified mail.~~

B. ~~Specific categories of information that shall be denied confidentiality include:~~

1. ~~air emission data;~~
2. ~~any permit or portion of a permit issued to a source in accordance with LAC 33:III.507;~~
3. ~~effluent and discharge data to surface waters and groundwaters;~~

- ~~4. location and identification of any buried waste;~~
- ~~5. name and address of any license, registration or permit applicant or permittee;~~
- ~~6. all NPDES, LPDES, and other water discharge permit applications or permits. Information required by LPDES application forms may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms; and~~
- ~~7. any other information required by the law or regulations to be disclosed or for which a claim of confidentiality is prohibited by law or regulation.~~

~~C. The notice of determination shall become final and not subject to further administrative review unless, no later than 30 days after receipt of this document, the submitter files a written request for a hearing.~~

~~D. Information submitted under a claim of confidentiality shall be held as confidential until a final determination has been made.~~

A. The department shall make a determination and send a written response to the requester by certified mail within a reasonable time from receipt of a complete request for confidentiality, except for those requests made in accordance with R.S. 30:2074(D), in which case the department shall send a written response by certified mail within 21 working days from receipt of a complete request for confidentiality.

B. The department's determination shall become final unless, no later than 30 days after receipt of the written determination, the requester files a written request for a hearing.

C. Information or records for which a complete confidentiality request has been submitted shall be held confidential until the department's determination becomes final. Departmental employees, other than those charged with assessing the request for confidentiality, shall not be given access to such information or records, even if necessary for the performance of their jobs, until the department's determination as to confidentiality becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:**.

§507. ~~Authorized Agent~~ Accessibility

~~A. In the event a claim of confidentiality is granted, such confidentiality shall not apply to the necessary use of the information by duly authorized officers or employees of the state or federal government in carrying out their responsibilities under the Act or applicable federal law. Any officer or employee of the state or federal government who seeks access to such information must be duly authorized by the administrative authority. The administrative authority shall make a determination to grant such authorization based on a written request that shall specify the requestor's name, affiliation, and the need for access to the information based on the Act or applicable federal law. Department employees are exempt from requesting authorization in writing;~~

~~however, they must demonstrate a need for access to confidential information prior to seeking administrative authority approval.~~

~~B. — Any employee of the department or any former employee of the department or any authorized contractor acting as a representative of the secretary of the department who is convicted of intentional disclosure or conspiracy to disclose trade secrets or other information that has been determined to be confidential is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000, imprisonment for up to one year, or both.~~

A. — If a request for confidentiality is granted, such confidentiality shall not prevent the necessary use of the information or records by department employees or duly authorized officers or employees of local, state, or federal governments in carrying out their responsibilities under law. The secretary or the secretary's designee must duly authorize any officer or employee of local, state, or federal government who seeks access to confidential information or records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030 and 30:2074.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:343 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:**.

§508. Maintenance of Confidential Information

Repealed.

~~A. — Confidential information shall be maintained in a locked file separate from nonconfidential information. The file shall be labeled "CONFIDENTIAL," with access appropriately controlled.~~

~~B. — Whenever an authorized person gains access to a confidential file, he shall sign an access log, which indicates his understanding of the confidential status and his responsibility to protect the information from being disclosed to the public. The person will also indicate in the access log which file was removed, the date and time the file was removed, the affiliation of the person if not with the Department of Environmental Quality, and the time and date the file was returned.~~

~~C. — Except for members of the department staff, authorized persons shall review a confidential file in the presence of a department staff member. Confidential information shall be removed from the file no longer than is strictly necessary.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:343 (May 1996), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:**.

§509. Release of Confidential Information or Records

~~A. — The administrative authority shall remove confidential information from its files and return it to the submitter if such information is no longer necessary or~~

~~required after three years for the purposes of the Act, these regulations, or any order or under the terms and conditions of any license, registration, or permit.~~

~~B. Files declared confidential as part of an investigation shall be returned to the public record files upon conclusion of the investigation.~~

A. Information or records that are declared confidential to prevent impairment of an ongoing investigation or prejudice to the final decision regarding a violation will be made available for public inspection upon conclusion of the investigation or rendition of the final decision regarding a violation.

B. All other information or records that are declared confidential are subject to public disclosure three years from the date of determination of confidentiality, unless a complete request for continuance of confidentiality is received no later than 180 days prior to the expiration of the three-year period.

C. The submitter of information or records or the submitter's successor or assignee shall notify the secretary, by authentic act, of any information or record that is no longer considered to be confidential and shall release the secretary from any responsibility with regard to any claim of confidentiality concerning that record or information.

D. Renewal of a grant of confidentiality is at the discretion of the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:343 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:**.

§511. Disclosure of Confidential Records or Information

A. Any employee or former employee of the department or anyone acting as a representative of the secretary of the department who is convicted of intentional disclosure or conspiracy to disclose trade secrets or other information that has been determined to be confidential is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000, imprisonment for up to one year, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30: **.